

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<p>CACERES DRYWALL CORPORATION, Individually and on Behalf of All Others Similarly Situated,</p> <p style="text-align:center"><i>Plaintiff,</i></p> <p>vs.</p> <p>NATIONAL GYPSUM COMPANY a/k/a NEW NGC, INC.; GOLDEN EAGLE INDUSTRIES, INC. a/k/a SPANGLER COMPANIES, INC.; LAFARGE NORTH AMERICA INC., LAFARGE S.A. a/k/a LAFARGE WORLDWIDE; AMERICAN GYPSUM COMPANY LLC, GEORGIA-PACIFIC LLC; USG CORPORATION; L&amp;W SUPPLY CORPORATION; CERTAINTEED CORPORATION; SAINT-GOBAIN CORPORATION; SAINT-GOBAIN S.A. a/k/a COMPAGNIE DE SAINT-GOBAIN; TIN INC. d/b/a TEMPLE-INLAND INC.; PABCO BUILDING PRODUCTS, LLC,</p> <p style="text-align:center"><i>Defendants.</i></p>	<p><b>CASE NO. 3:13-cv-31</b></p>
<p>JERRY R. BERKHOUS D/B/A BERKHOUS DRYWALL &amp; CONSTRUCTION, Individually and on Behalf of all Others Similarly Situated,</p> <p style="text-align:center"><i>Plaintiff,</i></p> <p>vs.</p> <p>NATIONAL GYPSUM COMPANY a/k/a NEW NGC, INC.; GOLDEN EAGLE INDUSTRIES, INC. a/k/a SPANGLER COMPANIES, INC.; LAFARGE NORTH AMERICA INC., LAFARGE S.A. a/k/a LAFARGE WORLDWIDE; AMERICAN GYPSUM COMPANY LLC, GEORGIA-PACIFIC LLC; USG CORPORATION; L&amp;W SUPPLY CORPORATION; CERTAINTEED CORPORATION; SAINT-GOBAIN CORPORATION; SAINT-GOBAIN S.A.; TIN INC. d/b/a TEMPLE-</p>	<p><b>CASE NO. 3:13-cv-35</b></p>

INLAND INC.; PABCO BUILDING PRODUCTS, LLC,  <i>Defendants.</i>	
ERIEZ CONSTRUCTION, INC., Individually and on Behalf of all Others Similarly Situated,  <i>Plaintiff,</i>  vs.  NEW NGC, INC.; USG CORPORATION; UNITED STATES GYPSUM COMPANY; L&W SUPPLY CORPORATION; LAFARGE NORTH AMERICA INC.; CERTAINTEED CORP.; SAINT- GOBAIN CORPORATION; GEORGIA-PACIFIC LLC; AMERICAN GYPSUM COMPANY LLC; TIN INC. d/b/a TEMPLE- INLAND INC.; PABCO BUILDING PRODUCTS, LLC,  <i>Defendants.</i>	<b>CASE NO. 3:13-cv-59</b>

## **STIPULATION AND ORDER**

**WHEREAS**, currently pending before this Court are three civil actions alleging a conspiracy to restrain trade in domestic drywall in violation of the Sherman Antitrust Act (the “WDNC Related Actions”), as follows:

*Caceres Drywall Corp. v. National Gypsum Company, et al.*, C.A. 3:13-cv-00031.

*Berkhous v. National Gypsum Company, et al.*, C.A. 3:13-cv-00035.

*Eriez Construction, Inc. v. New NGC, Inc, et al.*, C.A. 3:13-cv-00059.

**WHEREAS**, other such Related Actions may subsequently be filed in this Court ;

**WHEREAS**, other related civil actions are pending or may be subsequently filed in any other federal or state court making similar allegations as do Stipulating Plaintiffs (“Other Related Actions”), including, but not limited to:

*Innovated Services LLC, Inc. v. USG Corp., et al.*, 1:13-cv-00502 (N.D. Ill.);

*Grant Lumber Pole Buildings, LLC v. USG Corp. et al.*, 1:13-cv-00697 (N.D. Ill.);

*Janicki Drywall, Inc. v. CertainTeed Corp., et al.*, 2:12-cv-07106 (E.D. Pa.);

*New Deal Lumber & Millwork Co., Inc. v. USG Corp., et al.*, 2:12-cv-07161 (E.D. Pa.);

*Sierra Drywall Systems, Inc. v. CertainTeed Corp., et al.*, 2:13-cv-00020 (E.D. Pa.);

*Grubb Lumber Company, Inc. v. USG Corp., et al.*, 2:13-cv-00249 (E.D. Pa.);

*Pitter v. CertainTeed Corp., et al.*, 2:13-cv-00384 (E.D. Pa.);

*Glaser v. CertainTeed Corp., et al.*, 2:13-cv-00559 (E.D. Pa.);

*Ivyland Builders, LLC v. USG Corporation, et al.*, 2:13-cv-00563 (E.D. Pa.);

*Agbodike v. CertainTeed Corp., et al.*, 2:13-cv-00607 (E.D. Pa.); and

*Oregon State Drywall, LLC v. CertainTeed Corp., et al.*, 2:13-cv-00620 (E.D. Pa.)

**WHEREAS**, Plaintiffs in the WDNC Related Actions (“Stipulating Plaintiffs”) have moved for consolidation of the WDNC Related Actions in this Court;

**WHEREAS**, Stipulating Plaintiffs intend to file a Consolidated Amended Complaint after consolidation of the WDNC Related Actions;

**WHEREAS**, Stipulating Defendants include the undersigned and other Defendants such as shall join in this stipulation in accordance with Paragraph Five, below.

**WHEREAS**, Stipulating Plaintiffs and Stipulating Defendants, by and through their undersigned counsel, stipulate to the following Order:

1. Defendants will not be required to answer or otherwise plead in response to the complaints filed or any consolidated or amended complaints filed in the future in the WDNC Related Actions until 30 days after a consolidated amended complaint is filed in a transferee court. Plaintiffs will file their opposition to a motion to dismiss, if filed, within 30 days thereafter. In the event that the Motion for Consolidation and Transfer under 28 U.S.C. § 1407 is denied, the parties will confer within seven (7) days of the JPML’s order regarding the due date for responsive pleadings in the WDNC Related Actions. No discovery shall be served in the WDNC Related Actions while this stipulation is in effect.

2. Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that service of the individual complaints filed in the WDNC Related Actions upon their counsel shall constitute valid and sufficient process and service of process under the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable statute, rule, regulation, or anything else having the force and effect of law.

3. Except as to the sufficiency of process or service of process, Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that the entry into this

stipulation by the Stipulating Defendants shall not constitute a waiver of any jurisdictional defenses that may be available under Rule 12 of the Federal Rules of Civil Procedure, a waiver of any affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure, or a waiver of any other statutory or common law defenses that may be available to the Stipulating Defendants in the WDNC Related Actions and the Other Related Actions. The Stipulating Defendants expressly reserve their rights to raise any such defenses in response to any operative or amended complaint that may be filed relating to this action.

4. Defendants agree that they will seek a substantially similar stipulation in any related action and, if they are unable to reach agreement, will file a motion to stay any related action before filing a responsive pleading in those related actions;

5. Further, and notwithstanding any other provision set forth herein, Stipulating Plaintiffs and Stipulating Defendants hereby stipulate and agree if any Stipulating Defendant answers, moves, or otherwise pleads in response to any complaint filed in any Other Related Action before the date required by this stipulation, such Stipulating Defendant shall file an answer, motion, or other responsive pleading in all WDNC Related Actions on the same day as such answer, motion, or other responsive pleading is filed in any such Other Related Action.

6. Defendants agree that they will engage in a conference pursuant to Fed. R. Civ. P. 26(f) with Plaintiffs within 14 days of appointment of lead counsel for the Plaintiffs in the transferee court.

7. Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that this extension is available, without further stipulation, to all named defendants who notify Stipulating Plaintiff in writing of their intention to join this Stipulation.

8. Plaintiffs agree to dismiss without prejudice Golden Eagle Industries, Inc. A/K/A Spangler Companies, Inc., Lafarge S.A. A/K/A Lafarge Worldwide, Saint-Gobain S.A. A/K/A Compagnie De Saint-Gobain within 10 days of entering into this Stipulation.

9. Defendants agree to notify the Court by February 12, 2013, stating that Defendants do not object to Plaintiffs Motion to Consolidate.

**STIPULATED AND AGREED TO THIS 12TH DAY OF FEBRUARY, 2013.**

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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

